

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

Jeffrey Cordtz,
Plaintiff

Case No. 1:21-cv-02003-MHC-LTW

v
Johnson Legal Offices, LLC;
FCI Lender Services, Inc.; and
Larry W. Johnson
Defendants

REPLY IN FURTHER SUPPORT OF ALLOWING A 3-PAGE SUR-REPLY

Plaintiff made this motion pursuant to the Scheduling Order concerning Sur-Reply briefs, Section I. D., Doc. 39, Page 3 of 12 not under FRCP 15(d).

Minnifield v. Wells Fargo Bank, N.A. et al., No. 21-13193, 2022 WL 2348524 (11th Cir. June 29, 2022) affirmed *Minnifield v. Wells Fargo Bank, N.A.*, et al, 2021 WL 4269482 (N.D. Ga. Sept. 9, 2021) which had adopted the R&R in *Minnifield v. Wells Fargo Bank, N.A.*, 2021 WL 4269484 (N.D. Ga. Aug. 4, 2021) (“R&R”). The *R&R* was tasked with determining what kinds of persons the FDCPA definition of “debt collector” includes and does not include. This is the same question in this case, does the FDCPA definition of “debt collector” include the Johnson Defendants. The *R&R* at *4, relying on *Davidson v. Capital One Bank (USA)*, N.A., 797 F.3d 1309, 1314 (11th Cir. 2015) held that the definition of “debt collector” only includes persons who collect debt *for another* and the Bank was

collecting for itself not for another. “[A] person must regularly collect or attempt to collect debts for *others* in order to qualify as a “debt collector” under the” FDCPA. *Davidson*, 797 F.3d at 1316. (emphasis added).

For purposes of our case, the *R&R* at *4 quotes *Davidson* that “the statutory definition of ‘debt collector’ applies without regard to the default status of the underlying debt” and applies so long as the person ‘regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owe or due another.’ The Johnson Defendants correctly assert that under *Obduskey* persons engaged in non-judicial foreclosure are only subject to a few provisions of the FDCPA. But the Johnson Defendants erroneously contend that it follows that non-judicial foreclosure is not debt collection. *Obduskey* never said that persons engaged in non-judicial foreclosure are not debt collectors or that non-judicial foreclosure is not debt collection. As shown in the *R&R* and in *Davidson*, *any* debt collection for another including non-judicial foreclosure debt collection goes into consideration when considering whether the person regularly collects debts.

The Johnson Defendants also erroneously contend that the 11th Circuit’s 2015 decision in *Davidson* that ‘any regular debt collection for another makes a person a FDCPA defined debt collector’ was overruled by the later Supreme Court’s 2019 decision in *Obduskey*. The Johnson Defendants do not say how, why, or where it was overruled. In any event, even if the intervening decision of

Obduskey may fairly be said to weaken *Davidson*, that is not a sufficient basis for overruling *Davidson* unless *Obduskey* is “clearly on point” which *Obduskey* isn’t. *Atlantic Sounding Co. v. Townsend*, 496 F.3d 1282, 1284 (11th Cir. 2007); *Drug, Inc. v. Aetna U.S. Healthcare, Inc.*, 475 F.3d 1228, 1230 (11th Cir. 2007) (“Obedience to a Supreme Court decision is one thing, extrapolating from its implications a holding on an issue that was not before that Court in order to upend settled circuit law is another thing.”) Furthermore, the recent decision in *Minnifield* shows that *Davidson* has not been overruled and is still precedential.

Conclusion

The Court should grant Plaintiff summary judgment on the issue of whether the Johnson Defendants are debt collectors. *Artistic Entertainment, Inc. v. City of Warner Robins*, 331 F.3d 1196, 1202 (11th Cir. 2003) (where a “legal issue has been fully developed, and the evidentiary record is complete, summary judgment is entirely appropriate even if no formal notice has been provided.”)

Dated: June 30, 2022

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